

Brigham Young University Law School BYU Law Digital Commons

Utah Court of Appeals Briefs

1998

Schaeffer Industries Inc v. Utah Department of Workforce Services, Workforce Appeals Board, and James Mann : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Suzan Pixton; Attorney for Respondent.

Clark K. Taylor; Scott T. Temby; Attorneys for Peitioner.

Recommended Citation

Reply Brief, *Schaeffer Industries Inc v. Utah Department of Workforce Services*, No. 980348 (Utah Court of Appeals, 1998).
https://digitalcommons.law.byu.edu/byu_ca2/1619

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE COURT OF APPEALS OF THE STATE OF UTAH

<p>SCHAEFFER INDUSTRIES INC., A California Corporation,</p> <p>Petitioner,</p> <p>vs.</p> <p>UTAH DEPARTMENT OF WORKFORCE SERVICES, WORKFORCE APPEALS BOARD, and JAMES MANN,</p> <p>Respondents.</p>	<p>Court of Appeals No. 980348-CA</p> <p>Civil No. 97-A-05319</p> <p>Priority 14</p>
--	--

REPLY BRIEF OF PETITIONER - SCHAEFFER INDUSTRIES INC.

On Appeal from the Decisions of the Utah Department of Workforce Services and
the Workforce Appeals Board dated March 20, 1998, and June 1, 1998,
respectively,
Administrative Law Judge Lavon Liddle-Gamonal

Clark K. Taylor, Esq. (#5354)
Scott T. Temby, Esq. (#8081)
Attorneys for Petitioner
141 South Western Coil Road
Lindon, Utah 84042

Suzan Pixton (#2608)
Attorney for Respondent
Workforce Appeals Board
Department of Workforce Services
140 East 300 South
P.O. Box 45244
Salt Lake City, Utah 84145-0244

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU

50

.A10

DOCKET NO 980348-CA

980348-CA
998

IN THE COURT OF APPEALS OF THE STATE OF UTAH

SCHAEFFER INDUSTRIES INC., A California Corporation, Petitioner, vs. UTAH DEPARTMENT OF WORKFORCE SERVICES, WORKFORCE APPEALS BOARD, and JAMES MANN, Respondents.	Court of Appeals No. 980348-CA Civil No. 97-A-05319 Priority 14
--	---

REPLY BRIEF OF PETITIONER - SCHAEFFER INDUSTRIES INC.

On Appeal from the Decisions of the Utah Department of Workforce Services and
the Workforce Appeals Board dated March 20, 1998, and June 1, 1998,
respectively,
Administrative Law Judge Lavon Liddle-Gamonal

Suzan Pixton (#2608)
Attorney for Respondent
Workforce Appeals Board
Department of Workforce Services
140 East 300 South
P.O. Box 45244
Salt Lake City, Utah 84145-0244

Clark K. Taylor, Esq. (#5354)
Scott T. Temby, Esq. (#8081)
Attorneys for Petitioner
141 South Western Coil Road
Lindon, Utah 84042

TABLE OF CONTENTS

	<u>Page</u>
ARGUMENT.....	1
POINT I THERE IS NO EVIDENCE TO SUPPORT THE CONCLUSION THAT CLAIMANT VOLUNTARILY LEFT SCHAEFFER WITH GOOD CAUSE.....	1
A. CLAIMANT HAS NOT SHOWN “GOOD CAUSE” FOR QUITTING.....	1
B. SCHAEFFER’S CHANGE IN PRODUCTION TIMES DID NOT NECESSITATE IMMEDIATE SEVERANCE OF THE EMPLOYMENT RELATIONSHIP WITH SCHAEFFER	2
C. SELLING STEEL TO BOTH DISTRIBUTORS AND TO END-USERS WHO HAPPEN TO BE CUSTOMERS OF DISTRIBUTORS DID NOT NECESSITATE CLAIMANT TO IMMEDIATELY SEVER HIS EMPLOYMENT RELATIONSHIP WITH SCHAEFFER.....	3
D. CLAIMANT HAD THE ABILITY TO CONTROL OR PREVENT ANY ADVERSE EFFECT ON HIM.....	4
POINT II A MARSHALING OF THE EVIDENCE IN SUPPORT OF THE BOARD’S DECISIONS SHOWS THAT THE BOARD’S DECISIONS WERE CLEARLY ERRONEOUS.....	5
CONCLUSION.....	8

TABLE OF CASES AND AUTHORITIES

	<u>Page</u>
Cases:	
<u>Matter of Estate of Bartell</u> , 776 P.2d 885 (Utah 1989).....	8
<u>State v. Walker</u> , 743 P.2d 191 (Utah 1987).....	8
Rules:	
Rule 994-405-102(1), Utah Unemployment Insurance Rules.....	1

ARGUMENT

POINT 1

THERE IS NO EVIDENCE TO SUPPORT THE CONCLUSION THAT CLAIMANT VOLUNTARILY LEFT SCHAEFFER WITH GOOD CAUSE.

A. Claimant has not shown “good cause” for quitting.

R994-405-102(1) states:

“[g]ood cause is established if the continuance of the employment would have an adverse effect on the claimant which could not be controlled or prevented *and necessitated immediate severance of the employment relationship...*” (Emphasis added).

Claimant has failed to produce sufficient evidence in support of the requirement set forth above. The evidence in the record clearly establishes that Schaeffer requested Claimant to continue his employment with Schaeffer while Claimant looked for employment elsewhere. Claimant had worked for Schaeffer over a period of 15 months, and nothing in the Record could lead a person to conclude that Claimant would have suffered any adverse effect necessitating immediate separation.

In holding that Claimant had good cause for his voluntary quit from Schaeffer, Judge Liddle-Gamonal determined that Schaeffer *could* have placed Claimant’s professional reputation at risk, not that Claimant’s reputation (if any existed) was *actually* placed at risk.

Judge Liddle-Gamonal’s conclusion further illustrates that no harm was occurring, in fact, to any reputation the Claimant may have had. The use of the speculative term “could”, instead of the definitive statement “was” or “is” must be interpreted to mean that Claimant, in fact, did not introduce evidence of a

reputation, or that any alleged reputation was suffering immediate harm necessitating immediate severance of the employment relationship.

It is important to remind the court that Claimant had absolutely no experience in the steel industry whatsoever before joining Schaeffer. Because Claimant was, at best, a neophyte in the steel industry, he could not have established a reputation within the industry. Likewise, he could not have been developing a negative reputation, or damaging any reputation that may have existed, since his actions on behalf of Schaeffer were consistent with the practices within the industry. Because there is no evidence that Claimant has or had a professional reputation in the steel industry, there is absolutely no basis upon which to conclude that a non-existent reputation was at risk

B. Schaeffer's change in production times did not necessitate immediate severance of the employment relationship with Schaeffer.

Significant attention was given by Judge Liddle-Gamonal and the Board to the production times and schedules of the new tube mill. However, no evidence was introduced by Claimant pertaining to the necessity of immediately terminating the employment relationship due to any difficulties with production times.

Evidence was introduced at the hearing that difficulties with production times required employees, including Claimant, to keep customers apprised of changes in production times. Thus, so long as Claimant adhered to company policy, customers would have been kept informed, and any reputation of the Claimant would have been enhanced through his demonstration of interest for the customer, to the customer.

Additionally, the separation could not possibly have been motivated by circumstances which made the continuation of the employment a hardship or matter of real concern sufficiently adverse to a reasonable person to outweigh the

benefits of remaining employed. A reasonable person simply would attempt to understand the industry within which he or she is working and then, in the case of the steel processing industry, stay in constant contact with customers to minimize anxiety, if any, with respect to production timelines. If the practices of the steel industry, including Schaeffer, were inconsistent with any personal ideology of the Claimant, he could have, and should have, continued to have worked for Schaeffer while searching for new employment.

The changes in production could not, and as the evidence shows, did not, necessitate the immediate severance of the employment relationship between Claimant and Schaeffer.

- C. Selling steel to both distributors and to end-users who happen to be customers of distributors did not necessitate Claimant to immediately sever his employment relationship with Schaeffer.

Schaeffer's sales strategy in selling product to both distributors and end-users is commonly recognized in the pipe and tube industry. It stands to reason that Claimant's reputation could not possibly have been ruined when the business practice of selling to both distributors and end-users is common within the pipe and tube industry. Even assuming, *arguendo*, that Claimant had a reputation within the steel industry, the practice of selling to distributors and customers of such distributors would not have harmed any reputation, since, as the evidence shows, such practices were common and expected within the steel industry. Claimant's alleged reasons for severing his employment did not necessitate the immediate separation of employment from Schaeffer.

Claimant may not have agreed with Schaeffer's policy of following the commonplace sales strategy of selling to both distributors and end-users, but any belief by Claimant of damage to his reputation is unsupported by evidence, and would be unreasonable and unfounded given industry practices.

At best, Claimant's reasons for belief of the consequences of remaining on the job were trifling and not substantial, and are unsupported by the evidence. Unfortunately for Claimant, as a matter of law, trifling reasons are not enough to show that continuance of the employment would have had an adverse effect on him which could not be controlled or prevented and necessitated immediate severance of the employment relationship.

D. Claimant Had The Ability To Control Or Prevent Any Adverse Effect On Him.

Even if there was an adverse effect on Claimant from his employment at Schaeffer, which Schaeffer vehemently denies, Claimant cannot establish good cause under R994-405-102. Claimant had the ability, and the opportunity, to control any adverse effect he believes may have occurred. For example, Claimant reasonably could have continued working while looking for other employment. Further, Claimant clearly had reasonable alternatives that would have made it possible for Claimant to prevent or control any adverse effect. Significantly, Schaeffer offered Claimant additional training to assist him in better understanding the industry. Schaeffer instructed Claimant on the realities of selling product in the steel processing industry and how to deal with those realities. Claimant was instructed on how to discuss production timelines with customers and was told, in effect, that there was nothing unusual about selling to both distributors and end-users.

Accordingly, for the reasons discussed above, Claimant is not entitled to Benefits because the evidence before Judge Liddle-Gamonal, the Board, and this court establishes he has not shown good cause for quitting his employment with Schaeffer.

//

//

POINT II.

A MARSHALING OF THE EVIDENCE IN SUPPORT OF THE BOARD'S DECISIONS SHOWS THAT THE BOARD'S DECISIONS WERE CLEARLY ERRONEOUS

The Board claims in its Brief that Schaeffer has not marshaled the evidence in support of the Board's Decision but has only marshaled the evidence supporting its own contentions. Although Schaeffer disagrees with the Board's overbroad contention, Schaeffer hereby "marshals" the following evidence in support of the Board's Decisions out of an extreme abundance of caution, the majority of which is set forth in the Statement of Facts contained in the Board's Brief:

Mr. Mann worked full time as an inside salesperson for Schaeffer Industries from July 15, 1996 to October 10, 1997. (Rec. P. 36). Mr. Mann was anxious for the job to work out because he had moved to Utah from New York to accept the job. (Rec. P. 46). Mr. Mann voluntarily left because he disagreed with the employer's procedures and philosophy. (Rec. P. 36, 54).

The employer was a start-up mill which manufactures structural tubes. The employer's philosophy is to sell the tubes to distributors as well as end users. (Rec. P. 38). Distributors are like wholesalers who sell product to end users. (Rec. P. 38). Selling to both distributors and end users created conflict for Mr. Mann. (Rec. P. 38, 39).

One of Mr. Mann's accounts was Pipe & Tube, a distributor. Mr. Mann was trying to make inroads with this particular company. (Rec. P. 46). An end user of this company called the employer about a product. The employer gave a quote to the end user. (Rec. P. 45-46). Pipe & Tube was upset when it learned the employer was quoting prices to one of its customers. (Rec. P. 46). Mr. Mann went to his supervisor, Mr. Schaeffer, who was President/CEO, about the situation. (Rec. P. 46, 49). Mr. Mann pointed out to him that it might not be in the best interests for him to develop a relationship with Pipe & Tube, if the employer was selling directly to Pipe & Tube's customers. (Rec. P. 46). Mr. Schaeffer was not concerned if Pipe & Tube lost its customers by the employer selling directly to Pipe & Tube's customers. (Rec. P. 46, 55).

Mr. Mann found it difficult trying to develop a relationship with a distributor while the employer was selling directly to the distributor's customers. (Rec. P. 39, 46). Another problem for Mr. Mann was the production times. (Rec. P. 42, 60, 65). The employer did not always adhere to its announced production schedule. (Rec. P. 43, 44, 51, 52, 56). The employer had meetings during which the production schedules were discussed (Rec. P. 60-62). Production schedules often changed which meant the product was not always delivered to the customers when it was promised. (Rec. P. 43). Mr. Mann felt that this put his customers out. (Rec. P. 64). The salesperson was expected to call the customers to tell them of the delays while continuing to get more business from them. (Rec. P. 44, 52).

Steelco was one of the customers who complained about the delays to Mr. Mann. (Rec. P. 42-44, 52). Other customers had filed lawsuits against Schaeffer Industries. (Rec. P. 43). Mr. Mann continues to believe Steelco was unsatisfied. (Rec. P. 44). Mr. Mann was uncomfortable with his inability to promise product by a specific delivery date when the customer called repeatedly, wanting to know what was going on. (Rec. P. 44).

Mr. Mann knew that outside salespeople for the employer would be simultaneously selling to the distributor's customer base. (Rec. P. 38, 39). Mr. Mann believed this created a conflict of interest. He felt the employer was eliminating its own distributors by taking its customers. (Rec. P. 38, 39). Mr. Mann felt he could not, in good faith, do what the employer wanted him to do, even though it may not have been unusual in the industry. (Rec. P. 40, 69). Mr. Mann felt he would sacrifice his reputation and lose his integrity if he remained with an employer that was going around the distributors to get their customers and instructing him to tell customers the employer was running their size when it was not. (Rec. P. 47, 65).

Mr. Mann believed it was better to quit working for Schaeffer Industries rather than continue working for an employer where he felt uncomfortable. He would not have accepted the job had he known this in advance. (Rec. P. 46, 71).

A careful review of the above-facts marshaled in support of the Board's Decisions show, without question, that the Board's findings "are so lacking in

support as to be ‘against the clear weight of the evidence,’ thus making them ‘clearly erroneous.’” *Matter of Estate of Bartell*, 776 P.2d 885, 886 (Utah 1989), (quoting, *State v. Walker*, 743 P.2d 191, 193 (Utah 1987)).

The facts before this court establish that Claimant failed to establish with admissible evidence a necessity for immediately separating his employment relationship with Schaeffer. Claimant had the opportunity and ability to continue in his employment with Schaeffer so as to obtain employment elsewhere. Any claim of harm to a professional reputation is speculative, in that no facts were introduced which would permit a conclusion that Claimant: 1) had a reputation within the steel industry, and, 2) that he was suffering any injury to such reputation. Hence, good cause has not been shown for Claimant’s quit.

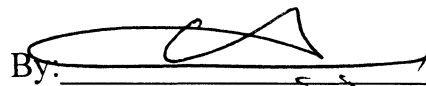
CONCLUSION

Based on the foregoing, Schaeffer requests the following:

1. That the Board’s Decision be reversed in that Claimant be held to have voluntarily left work at Schaeffer without good cause.
2. That Schaeffer be relieved of charges for unemployment insurance benefits granted to Claimant.

Dated this 12 day of November, 1998.

SCHAEFFER INDUSTRIES

By: 
Scott T. Temby, Esq.
Attorneys for Schaeffer Industries
141 South Western Coil Road
Lindon, Utah 84042

CERTIFICATE OF SERVICE


I hereby certify that on November 12, 1998, I served the foregoing REPLY BRIEF OF PETITIONER – SCHAEFFER INDUSTRIES INC. by mailing two (2) copies thereof, by first class United States Mail, postage prepaid, to the following:

Suzan Pixton, Esq.
Workforce Appeals Board
Utah Department of Workforce Services
140 East 300 South
P.O. Box 45244
Salt Lake City, UT 84145-0244

James A. Mann
7400 S. State St., #3108
Midvale, UT 84047

I hereby certify that on November 12, 1998, I served the foregoing REPLY BRIEF OF PETITIONER – SCHAEFFER INDUSTRIES INC. by hand delivering the original and seven photocopies, for a total of eight (8) copies thereof, to the following:

Utah Court of Appeals
450 South State Street
Salt Lake City, UT 84114



Scott T. Temby